

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ENRICO L. DAVIS,

Petitioner,

VS.

D. BOBBY, Warden,

Respondent.

CASE NO. 4:07-cv-02837

OPINION & ORDER
[Resolving Docs. No. 1, 5.]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

With this Opinion and Order, the Court decides whether to adopt Magistrate Judge Nancy A. Vecchiarelli’s Report and Recommendation for Enrico Davis’s petition for a writ of habeas corpus under 28 U.S.C. § 2254. [Doc. [5](#).]

For the reasons presented below, the Court **ADOPTS** the Report and Recommendation of Magistrate Judge Vecchiarelli and **DISMISSES** Davis's petition.

I. Background

On September 19, 2007, Petitioner Enrico L. Davis (“Davis”), *pro se*, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. [Doc. [1](#).] With his petition, he asserted one ground for relief: the “state of [O]hio violated [the] plea bargaining agreement with petitioner” in violation of his constitutional rights. *Id.* at 5. He directed the Court to “see amended petition” for supporting facts. *Id.* However, Petitioner Davis never submitted an amended petition or any other document

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summarizing the facts underlying his claim.

On December 6, 2007, the Court referred Davis's petition to Magistrate Judge Nancy A. Vecchiarelli for a Report and Recommendation. [Doc. [3](#).]

On December 7, 2007, because Magistrate Judge Vecchiarelli found that Davis's "terse and conclusory statement fails to identify any specific constitutional violation and completely omits the facts supporting his claim for relief," she ordered Petitioner Davis to submit an amended petition by December 28, 2007 to "cure[] the deficiencies in his present petition." [Doc. [4](#).] With this order, Magistrate Judge Vecchiarelli listed the specific ways that Davis needed to improve his petition. *Id.* The Petitioner never responded.

On January 15, 2008, with her Report and Recommendation, the Magistrate Judge recommended that the Court dismiss Davis's petition because he "fails to set forth a distinct constitutional claim or the facts supporting the claim." [Doc. [5](#).]

II. Legal Analysis

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of the Report and Recommendation to which an objection has been made. *See* [28 U.S.C. § 636\(b\)\(1\)](#). Parties must file any objections within ten days "after being served with a copy" of the Report. *Id.* They waive their right to appeal the Recommendation if they fail to object within the time allowed. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

In the instant case, on January 15, 2008, Magistrate Judge Vecchiarelli issued a Report and Recommendation. [Doc. [5](#).] More than ten days have passed, and neither party has objected to her

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Recommendation. Having conducted its own review of the docket, the Court agrees with the conclusions of Magistrate Judge Vecchiarelli and adopts the Report and Recommendation as its own. Therefore, the Court incorporates Magistrate Judge Vecchiarelli's findings of fact and conclusions of law fully herein by reference.

III. Conclusion

For the reasons discussed above, the Court **ADOPTS** the Report and Recommendation of Magistrate Judge Vecchiarelli and **DISMISSES** Davis's petition.

IT IS SO ORDERED.

Dated: February 5, 2008

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE